

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Criminal Law Advisory Committee
Hon. Steven Z. Perren, Chair
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DATE: August 11, 2008

SUBJECT: Criminal Law: Petitions for Writs of Habeas Corpus (amend Cal.
Rules of Court, rule 4.551 and revise Judicial Council form MC-
275) (Action Required)

Issue Statement

The procedure for reaching the merits of petitions for writs of habeas corpus is governed by Penal Code section 1473 et seq. and the California Rules of Court, rule 4.550 et seq. As explained below, the proposed revisions to rule 4.551 and form MC-275 are designed to eliminate two potentially misleading references to the service requirements of Penal Code section 1475.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2009:

1. Amend California Rules of Court, rule 4.551 to delete a potentially misleading reference to the service requirements of Penal Code section 1475 from rule 4.551(a)(1); and
2. Revise Judicial Council form MC-275, *Petition for Writ of Habeas Corpus*, to delete a potentially misleading reference to the service requirements of Penal Code section 1475 and make other minor, nonsubstantive changes designed to conform form MC-275 to current style guidelines for Judicial Council forms, e.g., adding italics and aligning columns.

The text of the proposed substantive amendments to rule 4.551 and Judicial Council form MC-275, *Petition for Writ of Habeas Corpus*, is attached at page 4.

Rationale for Recommendation

A court may summarily deny a petition for habeas corpus if the petition fails to state a prima facie case for relief, and, thus, before the petition is served on the prosecuting attorney.¹ Penal Code section 1475 requires a copy of the writ petition to be served on the prosecuting attorney “at least 24 hours before the time at which said writ is made returnable and no application for the writ can be heard without proof of service in cases where the service is required.” This service requirement applies before the petition is heard on the merits but does not require service of the petition before *filing*. Rule 4.551 and form MC-275, however, contain misleading references to the service requirements of Penal Code section 1475 that could be read to require service of the petition on the prosecuting attorney before a court will accept a petition for filing.

First, rule 4.551 contains a reference to Penal Code section 1475 that could be read to suggest that a writ petition should not be accepted for filing until it has been served on the prosecuting attorney. Specifically, rule 4.551(a)(1) provides that “[e]xcept as provided in (2), the petition . . . must be served as required in Penal Code section 1475.” Rule 4.551(a)(2), in turn, states that “[f]or good cause, a court may also accept for filing a petition that does not comply with (a)(1),” i.e., that has not been “served as required in Penal Code section 1475.” Thus, by implication, rule 4.551 could be read to mean that a court will not accept a petition for filing unless the petition has been served on the prosecuting attorney as required by Penal Code section 1475.

Similarly, Judicial Council form MC-275, *Petition for Writ of Habeas Corpus*, includes the following instruction located on the face of the form: “In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.” By referring to the service requirements of Penal Code section 1475 on the face of the form, along with other *filing* instructions, this advisement may be interpreted to require service of the petition on the prosecuting attorney before a court will accept a petition for filing.

Because confusion regarding the service requirements of writ petitions may lead to the inappropriate summary denial of writ petitions for improper service, this proposal recommends deleting the misleading reference to Penal Code section 1475 from rule 4.551(a)(1) and the misleading instruction on the first page of the Judicial Council form MC-275, *Petition for Writ of Habeas Corpus*.

¹ See rules 4.551(c) and 4.550(b)(2), (3).

Alternative Actions Considered

As noted in the next section, the committee received and considered suggestions for unrelated substantive changes to rule 4.551 and form MC-275 that the committee declined to implement because they address aspects of the rule and form that are beyond the scope of the proposal that was circulated for public comment. The committee will, however, consider those suggestions at a future meeting.

Comments From Interested Parties

The proposed revisions were circulated as part of the spring 2008 comment cycle. A total of eight comments were received. Of those, four agreed with the proposal, three agreed with the proposal if modified, and one did not specify a position. No disagreements were submitted. A chart with all the comments received and the committee responses to each is attached at page 12.

As noted above, the committee declined to implement a few comments suggesting amendments or revisions that exceed the scope of the proposal. For example, one commentator suggested adding a use note to separately address the effect of lack of proper service of habeas petitions. The committee decided against considering such a use note, however, because the proposed revisions are designed only to preclude an interpretation of the rule that conflicts with the statute.

Other unrelated substantive suggestions, such as adding instructions regarding the required number of copies of the petition that must be filed in the Court of Appeal and whose burden it is to provide copies to the court, were deferred for consideration by the committee at a future meeting.

Implementation Requirements and Costs

Expected costs would be limited to revising the California Rules of Court to reflect the proposed deletion, making revised forms available for use by petitioners, and associated training of court staff and judicial officers on the changes to the forms.

Attachments

1 **Rule 4.551. Habeas corpus proceedings**

2
3 **(a) Petition; form and court ruling**

4
5 (1) Except as provided in (2), the petition must be on the *Petition for Writ*
6 *of Habeas Corpus* (form MC-275), ~~and must be served as required in~~
7 ~~Penal Code section 1475.~~

8
9 (2) For good cause, a court may also accept for filing a petition that does
10 not comply with (a)(1). A petition submitted by an attorney need not be
11 on the Judicial Council form. However, a petition that is not on the
12 Judicial Council form must comply with Penal Code section 1474 and
13 must contain the pertinent information specified in the *Petition for Writ*
14 *of Habeas Corpus* (form MC-275), including the information required
15 regarding other petitions, motions, or applications filed in any court
16 with respect to the conviction, commitment, or issue.

17
18 (3)–(5) * * *

19
20 **(b)–(h) * * ***

21

Name: _____

Address: _____

CDC or ID Number: _____

(Court)

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner

vs.

Respondent

No. _____

(To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and 4 copies of the petition and, if separately bound, 1 copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- A conviction
- Parole
- A sentence
- Credits
- Jail or prison conditions
- Prison discipline
- Other (specify): _____

1. Your name: _____
2. Where are you incarcerated? _____
3. Why are you in custody? Criminal conviction Civil commitment

Answer items a through i to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

- b. Penal or other code sections: _____

- c. Name and location of sentencing or committing court: _____

- d. Case number: _____

- e. Date convicted or committed: _____

- f. Date sentenced: _____

- g. Length of sentence: _____

- h. When do you expect to be released? _____

- i. Were you represented by counsel in the trial court? Yes No *If yes, state the attorney's name and address:*

4. What was the LAST plea you entered? (Check one):

- Not guilty Guilty Nolo contendere Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

- Jury Judge without a jury Submitted on transcript Awaiting trial

8. Did you appeal from the conviction, sentence, or commitment? Yes No If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):

b. Result: _____ c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? Yes No If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? Yes No If yes, give the following information:

a. Result: _____ b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

11. Administrative review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:

b. Did you seek the highest level of administrative review available? Yes No

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? Yes If yes, continue with number 13. No If no, skip to number 15.

13. a. (1) Name of court: _____

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (*attach order or explain why unavailable*): _____

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (*attach order or explain why unavailable*): _____

(5) Date of decision: _____

c. *For additional prior petitions, applications, or motions, provide the same information on a separate page.*

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

16. Are you presently represented by counsel? Yes No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? Yes No If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____  _____
(SIGNATURE OF PETITIONER)

SPR08-33**Criminal Cases: Petitions for Writs of Habeas Corpus** (amend Cal. Rules of Court, rule 4.551; revise form MC-275)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Criminal Law Advisory Committee Response
1.	Cheryl Kanatzar Deputy Executive Officer Superior Court of Ventura County	A	No specific comment.	No response required.
2.	Los Angeles County District Attorney's Office Jennifer C. McDonald Deputy District Attorney	AM	Referring to the proposed amendments to Rule 4.551, subdivision (a), a use note stating that lack of service alone shall not prohibit the acceptance of a petition for filing will prevent inappropriate summary denial of a writ petition for improper service, while still facilitating the receipt by the People of the majority of petitions. On occasion, the People, having received a petition sufficiently meritorious on its face filed in pro per by a petitioner, request the court to issue an order to show cause and appoint counsel for the petitioner. If the People no longer receive service, we will be unable to take this step to assist those representing themselves to seek lawful and appropriate relief.	Although this comment is much appreciated, the committee has decided against adding a use note. Penal Code section 1475 provides for service “at least 24 hours before the time at which [the] writ is made returnable. . . .” A requirement of earlier service would require statutory amendment. The proposed amendments to rule 4.551 are intended to preclude an interpretation of the rule that would conflict with the statute.
3.	Orange County Bar Association Cathrine Castaldi President	A	No specific comment.	No response required.
4.	Corrine Pochop Assistant Clerk/Administrator California State Court of Appeal, Sixth Appellate District		* The commentator wants to alert the committee to the following possible error on form MC-275: The bulleted paragraph third from the bottom on the first page of the form states “If you are filing this petition in the Court of Appeal, file the original and 4 copies of the petition and, if separately bound, 1 copy of any supporting	This comment exceeds the scope of the proposed amendments. The committee appreciates the suggestion, however, and will consider it further at a future meeting.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR08-33**Criminal Cases: Petitions for Writs of Habeas Corpus** (amend Cal. Rules of Court, rule 4.551; revise form MC-275)

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	Commentator	Position	Comment	Criminal Law Advisory Committee Response
			documents.” That sentence is true if the habeas petition is filed by counsel; however, we normally see this form used by pro pers. According to rule 8.380(a)(3), pro pers file just an Original and 1 set of supporting documents.	
5.	Superior Court of Los Angeles County	AM	If an order to show cause or a request for an informal response is ordered, it should be the petitioner’s burden to provide copies of his/her writ to the Court. Language should include: “And two copies of the writ must be served by the petitioner on the Court in the event the Court issues an order to show cause or a request for an informal response.”	The required number of copies of the petition and whose burden it is to provide them is outside the scope of the proposal that was sent out for public comment. The committee appreciates the suggestion, however, and will consider it further at a future meeting.
6.	Superior Court of Orange County Erin Rigby Staff Analyst Rules & Forms Committee	AM	1. Should this Petition conform to headings of other Judicial Council forms? 2. Should “Proof of Service” be included on this form? If not, is there a specific Proof of Service form for Criminal matters such as this petition that the petitioner should be using? 3. Should there be some type of reference within the petition to refer the petitioner to which proof of service form should be used?	Comment (1) does not address the proposed revisions. Comments (2) and (3) do not address the proposed revisions. It should be noted, however, that the Criminal Law and Family and Juvenile Law Advisory Committees will consider developing a generic Proof of Service form for use in all criminal and delinquency matters at future meetings.
7.	Superior Court of Riverside County David Gutknecht Supervising Management Analyst	A	*The commentator stated that the proposed amendments are appropriate because they delete misleading references to Penal Code section	No response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR08-33**Criminal Cases: Petitions for Writs of Habeas Corpus** (amend Cal. Rules of Court, rule 4.551; revise form MC-275)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Criminal Law Advisory Committee Response
			1475, which should prevent inappropriate summary denial of writ petitions for improper service.	
8.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No specific comment.	No response required.